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8 Exact-Science Productions, LLC

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 EXACT-SCIENCE PRODUCTIONS, LLC,
12 a California corporation,

13 Plaintiff,

14 v.

15 FEMME KNITS INC., HAPA INDUSTRIES,
16 LTD., FOREVER 21, INC., FOREVER 21
17 RETAIL, INC., NORDSTROM, INC.,
18 DELIA*S GROUP INC., ALLOY, INC., and
19 DOES 1 through 100,

20 Defendants.

CASE NO.: CV 07-2296-JF

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT AND
[PROPOSED] ORDER**

F.R.C.P. 16 and Civil L.R. 16-10

Date: September 28, 2007

Time: 10:30 a.m.

Place: Courtroom 3, 5th Floor

Judge: Honorable Jeremy Fogel

1 The parties to the above-entitled action jointly submit this Case Management Statement
2 in advance of the September 28, 2007 Case Management Conference.

3 **1. Jurisdiction And Service.**

4 The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.,
5 Sections 1331 and 1338(a), as this action involves claims brought under federal law, the United
6 States Copyright Act, 17 U.S.C. Section 101 *et seq.*

7 All Defendants in this action have been served with the Complaint. There are no
8 issues regarding venue of this action. There are no issues regarding the Court's jurisdiction over
9 the Defendants in this action.

10 **2. Facts.**

11 **a. Plaintiff's Statement.**

12 Plaintiff Exact-Science is in the business of designing, printing and selling
13 clothing, including t-shirts and sweatshirts, containing designs of visual art. Exact-Science
14 obtained and registered the copyright to a design of visual art entitled, "Heart Shaped Cassette
15 Tape / I Love Music." This design is registered with the United States Copyright Office as VA
16 1-378-516 (the "Copyrighted Work"). Defendant Femme Knits Inc. manufactured, imported
17 offered for sale and sold garments bearing the Copyrighted Work owned by Exact-Science,
18 without license. Femme Knits Inc. sold garments with the Copyrighted Work to defendants
19 Alloy, Inc., Delia*s Group Inc., Forever 21, Inc., Forever 21 Retail, Inc., and Nordstrom, Inc. on
20 a continuous and systematic basis, over an extended period of time. Defendants sold these shirts
21 through their various retail establishments and over the Internet. Further, Defendants published
22 catalogs and images on the Internet with copied versions of the Copyrighted Work.

23 Defendants' goods include the creation of an unauthorized derivative work of the
24 Copyrighted Work. The image used by Defendants in connection with the manufacture,
25 importation, distribution, and sale of goods is substantially similar to the Copyrighted Work.
26 Defendants' acts are in violation of the exclusive right of the copyright holder to create
27 derivative works or to reproduce its copyrighted works, as articulated in 17 U.S.C. Section 106.
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1 Defendants' use of the Copyrighted Work is and has been made without Exact-Science's consent
2 or authorization and for commercial purposes. Such actions and conduct by Defendants also
3 constitutes copyright infringement under Section 501 of the Copyright Act, 17 U.S.C. § 501.

4 **b. Defendants' Statement.**

5 Femme Knits, Inc. is a designer and manufacturer of clothing. It designed and
6 manufactured clothing bearing a cassette tape surrounded by tape shaped like a heart, the design
7 inspired by a publicly-available similar design dating from 2003 or before - predating plaintiff's
8 design. Femme Knits, for itself and representing its customers, believes it will prove
9 independent design and other defenses to plaintiff's claims.

10 **3. Legal Issues.**

11 Whether the actions of the Defendants constitute copyright infringement and the
12 extent of damages, if any, to which the Plaintiff is entitled.

13 **4. Motions.**

14 There have not been any motions filed by any party in this action to date. At this time,
15 the parties do not anticipate the filing of any motions.

16 **5. Amendment Of Pleadings.**

17 At this time, the parties do not anticipate amending the pleadings on file in this
18 action.

19 **6. Evidence Preservation.**

20 The parties have taken necessary steps to ensure the preservation of relevant
21 evidence in this matter,

22 **7. Disclosures.**

23 The parties will serve their respective initial disclosures pursuant to Rule 26 on or
24 before October 17, 2007.
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1 **8. Discovery.**

2 At this time, there has been no discovery served.

3 **a. Timing Of Initial Disclosures.**

4 See Number 7, above.

5 **b. Subjects On Which Discovery May Be Needed.**

6 Plaintiff intends to serve discovery seeking the productions of documents
7 and information related to Defendants' manufacture and sale of garments bearing the
8 Copyrighted Work or derivatives thereof. In addition, Plaintiff intends to serve discovery
9 seeking an accounting of all amounts earned by Defendants as a result of its manufacture or sale
10 of garments bearing the Copyrighted Work or derivatives thereof.

11 Defendants believe the relevant documents and information should be
12 provided by plaintiff as part of the initial Rule 26(a)(1) disclosures. If not, defendants intend to
13 seek discovery of plaintiff's design and ownership of the design and sales of their product.

14 **c. Discovery Deadlines/Designation Of Expert And Other Witnesses.**

15 The parties propose the following discovery dates: (1) a cut-off for non-
16 expert discovery of May 30, 2008; (2) designation of expert witnesses by June 16, 2008; (3)
17 designation of expert rebuttal witnesses by July 15, 2008; (4) expert discovery cut-off of
18 September 30, 2008; (5) pre-trial disclosures due on October 1, 2008.

19 **d. Limitations On Discovery.**

20 The parties do not propose any limitations on discovery outside of those
21 imposed by the federal rules and local rules.

22 **9. Relief.**

23 Plaintiff seeks the following relief: (1) For an order permanently enjoining
24 Defendants from infringing Exact-Science's copyrighted images pursuant to Section 502 of the
25 Copyright Act, 17 U.S.C. § 502; (2) For an order directing Defendants to deliver for destruction
26 all apparel and other products in their possession or under their control, bearing or depicting any
27 unauthorized copy or derivative work of the Copyrighted Work, and all negatives, prints, copies,
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1 proofs, or other means of making same pursuant to Section 503 of the Copyright Act, 17 U.S.C §
2 503; (3) For an award of Exact-Science's actual damages and any of Defendants' additional
3 profits or, in the alternative, that Exact-Science recover statutory damages pursuant to Section
4 504 of the Copyright Act, 17 U.S.C. § 504; (4) For an award of costs, pursuant to 17 U.S.C.,
5 Sections 505; (5) For an award of reasonable attorneys' fees, pursuant to 17 U.S.C., Sections
6 505; (6) For an award of prejudgment interest on the amount of any award to Plaintiff. Plaintiff
7 is unable to determine the precise amount of damages it is entitled to without discovery as to the
8 both the number of infringing products sold and the revenue derived therefrom.

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10 **10. Settlement And ADR.**

11 The parties agree to an Early Settlement Conference with a Magistrate Judge and
12 request a prompt setting of such a session. If unsuccessful, the parties request court-sponsored
13 mediation as a second chance for settlement.

14 **11. Scheduling.**

15 The parties propose the following schedule: (1) cut-off for non-expert discovery
16 of May 30, 2008; (2) designation of expert witnesses by June 16, 2008; (3) designation of expert
17 rebuttal witnesses by July 15, 2008; (4) expert discovery cut-off date of September 30, 2008; (5)
18 deadline for the hearing of dispositive motions of September 30, 2008; (6) pre-trial disclosures
19 due on October 1, 2008; (7) pre-trial conference on October 15, 2008; (8) trial date of November
20 3, 2008.

21 **12. Trial.**


22 Plaintiff has demanded trial by jury. The trial is expected to last one week.

23 **13. Disclosure Of Non-Party Interested Entities Or Persons.**

24 The parties have each filed the "Certification of Interested Entities or Persons" as
25 required by Civil Local Rule 3-16.
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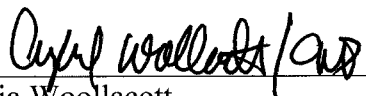
1 Dated: September 19, 2007

2 CMD ASSOCIATES

3
4 By: 
5 C. Matthew Didaleusky
6 Attorneys for Plaintiff
Exact-Science Productions, LLC

7
8 September 19, 2007

9 WOOLLACOTT JANNOL LLP

10 By: 
11 Cynthia Woollacott
12 Attorneys for Defendants
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[PROPOSED] ORDER

The following case management schedule is hereby adopted and Ordered by the Court:

- (1) cut-off for non-expert discovery of May 30, 2008;
- (2) designation of expert witnesses by June 16, 2008;
- (3) designation of expert rebuttal witnesses by July 15, 2008;
- (4) expert discovery cut-off date of September 30, 2008;
- (5) deadline for the hearing of dispositive motions of September 30, 2008;
- (6) pre-trial disclosures due on October 1, 2008;
- (7) pre-trial conference on October 15, 2008;
- (8) trial date of November 3, 2008.

IT IS SO ORDERED.

Date: _____

The Honorable Jeremy Fogel
United States District Court Judge
Northern District of California